* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No.1174/2006 with**
ITA Nos.1165, 1166, 1169,1173, 1176 & 1178 of 2006

% Judgment reserved on: 15th March, 2007

Judgment delivered on: 26th March, 2007

COMMISSIONER OF INCOME TAX
DELHI -XVII
MAYUR BHAWAN
CONNAUGHT CIRCUS
NEW DELHI. ..... Appellant

Through:Mr.R.D.Jolly, Adv.

Vs.

M/S MAX INDIA LTD.
MAX HOUSE, 1,DR. JHA MARG
OKHLA,
NEW DELHI-110020 ..... Respondent

Through:Mr.Ajay Vohra with
Ms.Kavita Jha, Advocates.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

By this common judgment, seven appeals bearing

Nos.1174, 1165, 1166, 1169,1173, 1176 & 1178 of 2006 filed by the Revenue are disposed of since common question of law is involved in these appeals.

2. All these appeals arise out of the consolidated order dated 23rd December, 2005 passed by the Income Tax Appellate Tribunal (in short as Tribunal) in ITA No.4685(Del)/2000 for the assessment years 1999-2000, ITA No.596(Del)/2002 for the financial years 1989-90 to 1997-98 and ITA Nos.3815-3818(Del)/2004 for the assessment years 1995-96 to 1998-99.

3. M/s Max India Ltd., the Assessee in this case under its scheme provided to its officers cars and hard furnishing items. Under the said scheme, the Assessee purchased cars and/or hard furnishing items in its name subject to the limit as indicated in the scheme framed by the Assessee and gave the same to its officials. Further, under the said scheme, the Assessee after the prescribed period allowed its officials to purchase the said items and/or agreed to replace the items. The Assessee sold to its employees hard furnishing items and cars at a price mutually agreed to. In some of the cases, the agreed prices were less than the

written down value of the items. The Assessing Officer held that the difference in the sale price of the items and the written down value of the items in the books of accounts of the Assessee was perquisite in the hands of its employees and the Assessee had not deducted the required TDS on the said perquisite value. Accordingly, the Assessing Officer initiated proceedings under Section 201/201(1A) of the Income Tax Act, 1961(hereinafter referred to as Act) and computed the short deduction of tax under Section 201 of the Act at Rs.3,27,373/- and interest thereon under Section 201(1A) of the Act at Rs.2,47,860/- totaling to Rs.5,75,233/- for the assessment years 1990-91 to 1998-99.

4. Similarly, the Assessing Officer computed the short deduction of tax under Section 201 of the Act at Rs.4,36,461/- and interest under Section 201(1A) of the Act at Rs.1,26,028/- totaling to Rs.5,62,489/- for the assessment years 1999-2000.

5. The Assessee being aggrieved with the order of the Assessing Officer filed appeals before the Commissioner of Income Tax(Appeals), who confirmed the order of the

Assessing Officer. Thereafter the Assessee filed appeals before the Tribunal.

6. The Tribunal vide impugned judgment, set aside the orders passed by the Commissioner of Income Tax (Appeals) and allowed appeal filed by the Assessee.

7. Aggrieved against the order of the Tribunal, Revenue has come in appeal before this Court.

8. It has been argued by the learned counsel for the Revenue that the Assessing Officer in his order under Section 201 of the Act has categorically established that the Assessee has sold the assets at less than the market price and these findings are based on the documents produced by the Assessee himself. Further, the Assessee did not place any material on record to show that the market value of the items is the same at which these items have been sold to its employees.

9. On the other hand, it has been argued by the learned counsel for the Assessee that no perquisite was involved in disposing of the assets by the Assessee to its employees at less than written down value, as the Assessing Officer has not brought any material on record to show that the market

prices of the assets at which the Assessee sold these items to its employees, was less than the fair market price.

10. It is not in dispute that the employer has to deduct TDS on the estimated salary in terms of Section 192 of the Act. The Revenue has not placed any material on record to show that the Assessee had sold the cars and other items to its employees at less than the fair market price prevailing at that time. The only plea taken by the Revenue to compute the perquisite value in the hands of the employees of the Assessee is that the written down value of these assets was higher than the sale price by the Assessee. There is no substance in the plea of the Revenue that if the items are sold by the Assessee at a lesser price than the written down value and in the absence of any material available on record that the sale price is less than the market price at that moment, the difference could be treated as perquisite in the hands of the employees.

11. Under the circumstances, we find no reason to disagree with the findings of the Tribunal that the Assessee could not be held to be in default of short deduction of TDS under Section 201 read with Section 192 of the Act and as

such the question of charging interest under Section 201(1A) of the Act does not arise.

12. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

13. So, under these circumstances, the question of penalty under Section 271C of the Act for deduction of tax does not arise, the Tribunal, thus, rightly cancelled the penalty imposed by the Assessee.

14. Accordingly, the present appeals filed by the Revenue are, hereby, dismissed.

(V. B. GUPTA)
JUDGE

MARCH 26, 2007 **(MADAN B. LOKUR)**
bisht **JUDGE**